ORIGINAL

No. 87-1586

In the

SUPREME COURT OF THE UNITED STATES

October Term, 1987

BRUNO E. CHALKO,

Appellant,

SHARON E. CHALKO,

Respondent.

* * * * *

ON APPEAL FROM THE COURT OF APPEAL
OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT, DIVISION TWO

* * * * *

MOTION TO AFFIRM OR DISMISS

* * * * *

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* * * * *

MOTION TO AFFIRM OR DISMISS

* * * * *

INTRODUCTORY STATEMENT

By way of response to appellant Bruno G. Chalko's jurisdictional statement, respondent Sharon E. Chalko hereby moves to affirm the decision sought to be appealed from, per Rule 16 of Supreme Court Rules, on the grounds that it is manifest that the questions on which the decision of the cause depends are so unsubstantial as not to need further argument, and that the decision sought to be appealed rests on sound reasoning to refute the three constitutional challenges now posed again by appellant. Alternatively, respondent Sharon E. Chalko moves to dismiss appellant's appeal, per Rule 16 of Supreme Court Rules, on the grounds that it fails to present a substantial federal question; the decision appealed from rests on an adequate non-federal basis; and appellant's appeal is premature since further proceedings were ordered to take place in the trial court on remand, which remain unlitigated to this date. These and other points raised by appellant are discussed at further length in the sections that follow.

* * * * *

## STATEMENT OF THE CASE

Appellant Bruno Chalko and respondent Sharon Chalko entered into a Marital Settlement Agreement on May 18, 1982, which was filed with the San Bernardino County Superior Court on May 26, 1982 and incorporated as part of the interlocutory judgment which dissolved the marriage of the parties on June 7, 1982. The Marital Settlement Agreement expressly listed "Military pension rights earned by Husband" as appellant Bruno Chalko's separate property in a separate section of the Marital Settlement Agreement. At that time those property rights were awarded to appellant. The interlocutory judgment of dissolution of marriage was entered on June 7, 1982. This judgment was not appealed by respondent. The parties were aware that the decision of McCarty v. McCarty, 453 U.S. 210, 69 L.Ed.2d 589, 101 S.Ct. 2728 (1981), controlled the disposition of military retirement benefits during the time they entered into a Marital Settlement Agreement.

On February 1, 1983 the United States Congress enacted the Federal Uniformed Services Former Spouses' Protection Act as 10 United States Code section 1408. This legislation abrogated the ruling of McCarty v. McCarty, supra, with respect to the divisibility of military nondisability retired pay benefits between spouses by state courts upon the dissolution of marriage. FUSFSPA authorized military retirement benefits to be divided pursuant to state law "for pay periods beginning after June 25, 1981." (10 U.S.C. §1408(c)(1).)

Although it is true that California courts did not rule that FUSFSPA should be applied retroactively before its effective date of February 1, 1983 (see Mueller v. Walker, 167 Cal.App.3d 600, 605 (1985)), the California Legislature enacted California Civil Code section 5124 to correct a basic inequity by allowing spouses of military members to seek modification of the division of military retirement benefits previously denied them by the preclusive effect of the McCarty Decision, so long as they applied for this relief prior to January 1, 1986.

Appellant's and respondent's interlocutory judgment of dissolution of marriage became final during the "window period" between June 25, 1981 and February 1, 1983, when neither party elected to appeal the interlocutory judgment while operating under the assumption that federal law preempted a state from dividing military pension benefits between the military member and the non-military member pursuant to state community property law, according to the ruling of McCarty v. McCarty, supra, then in effect. Thus, respondent Sharon Chalko was eligible to seek modification of her 1982 interlocutory judgment of dissolution, per authority of California Civil Code section 5124.

On August 29, 1985 respondent filed an order to show cause in which she sought modification of the 1982 interlocutory decree of dissolution to entitle her to, among other things, one-half of appellant's military retirement benefits as her community property interest upon their vesting. The matter was heard in open court and taken under submission by the trial judge on November 20, 1985. On December 12, 1985 the trial court found that, pursuant to California Civil Code section 5124, respondent Sharon Chalko was entitled to her share of respondent's retirement benefits upon their vesting, as a community property interest. This decision was communicated to trial counsel for both parties in a typewritten minute order mailed on December 13, 1985. It was denominated as a "Ruling on Issue of Retirement Benefits" in the heading titled "Nature of Proceedings" and as an "Order" at the bottom of the document.

On January 1, 1986 California Civil Code section 5124 was repealed by its own terms. (Cal. Civil Code §5124(d).)

On May 5, 1986 trial counsel for respondent Sharon Chalko presented to the trial court a proposed document for signature which was titled "Findings and Order After Hearing." This document stated that respondent Sharon Chalko was entitled to a community interest in appellant Bruno Chalko's disposable retired or retainer pay upon its vesting pursuant to 10 United States Code section 1408.

It was signed by respondent Bruno Chalko's trial counsel as "conforming to court order" on April 25, 1986, and was signed by the trial judge on June 10, 1986.

Respondent sought reconsideration of the trial court's June 10, 1986 order, which request was entertained but denied on August 20, 1986. On August 14, 1986 respondent Bruno Chalko filed his notice of appeal from "the whole and every portion of the Findings and Order After Hearing made and entered in the above-entitled action on June 10, 1986."

On October 20, 1987 the Court of Appeal of the State of California, Fourth Appellate District, Division Two, rejected all of appellant Bruno Chalko's constitutional challenges to California Civil Code section 5124 and the actions of the trial court by affirming its order of June 10, 1986 on all issues except the date on which payments of military retirement benefits are to begin for respondent Sharon Chalko; her proportional interest in those payments; and the amount of retirement pay to which appellant Bruno Chalko would be entitled at the time his retirement benefits were to mature. These latter issues referred to the trial court by the California Court of Appeal on remand were raised by respondent Sharon Chalko in her respondent's brief, which noted that the trial court found that respondent was entitled to receive a one-half interest in appellant Bruno Chalko's disposable retired or retainer pay upon its vesting, "based on the retirement pay of a Gunnery Sergeant (E-7)," while it was possible that, based on longer duration of military service, such benefits might actually vest at a higher rate, like E-8. Respondent argued that she would be entitled to share in any increase in such benefits prior to vesting. The California Court of Appeal remanded the case to the trial court for a factual determination of these issues and an order based upon the trial court's factual findings.

On or about November 30, 1987 appellant Bruno Chalko petitioned for review by the California Supreme Court. Review was denied on January 6, 1988. Appellant then filed a notice of appeal to this Court on February 22, 1988.

* * * * *

## STATEMENT OF PERTINENT FACTS

By his own admission appellant Bruno Chalko considered the military retirement benefits in issue to be his separate property when entering into the Marital Settlement Agreement. In a section of that document entitled "Fair Division," both appellant and respondent agreed that the property settlement document fairly divided their "community property, debts, and obligations." The Marital Settlement Agreement contains no language to indicate that appellant Bruno Chalko had bargained away anything else of value to keep his military retirement benefits in effecting a fair division of the couple's property. Moreover, the parties' Marital Settlement Agreement cannot be fairly interpreted to infer that, although speaking of "Fair Division," appellant and respondent had in some fashion agreed to unequally divide their property by mutual agreement. While the property settlement agreement did not expressly say that community property of the parties had been divided equally, the "Fair Division" language surely indicated that such had been intended by the parties.

Appellant and respondent did purport to release each other from further claims in the Marital Settlement Agreement, but when this was done, respondent Sharon Chalko was operating under the misapprehension that military retirement or retainer pay was necessarily the sole and separate property of the service member by federal law's then rigid adherence to this position and its announced preemption of any attempted state action inconsistent with this view, as enunciated in McCarty v. McCarty, 453 U.S. 210, 69 L.Ed.2d 589, 101 S.Ct. 2728 (1981). As respondent declared under penalty of perjury in her application for an order to show cause to modify the division of military retirement benefits following enactment of California Civil Code section 1524:

> "At the time of the Interlocutory Judgment of Dissolution of Marriage, the application of the case of McCarty v. McCarty was in effect. Because of this application, which held that military retirement or

retainer pay was the sole and separate property of the military member, I did not make a claim for my one-half interest in the community property portion of said retirement."

This statement of respondent Sharon Chalko was never contradicted in any way by appellant Bruno Chalko, either in declaration form or in sworn testimony.

* * * * *

ARGUMENT

I.

THE QUESTIONS ON WHICH THE DECISION OF THE CAUSE DEPENDS ARE SO UNSUBSTANTIAL AS NOT TO NEED FURTHER ARGUMENT.

Appellant Bruno Chalko is chiefly rehashing the same constitutional arguments he unsuccessfully raised before the California Court of Appeal and the California Supreme Court. While the questions raised embrace basic constitutional rights, for the reasons set out in II. A., II. B., and II. C. below, in the factual context of the case on review the questions posed by appellant are so unsubstantial that no further argument should be required before they are summarily rejected as out of hand. Under such circumstances, an appeal before this Court can and should be dismissed when it is determined that constitutional challenges are not substantial in nature. (Hicks v. Miranda, 422 U.S. 332, 344, 45 L.Ed.2d 223, 236, 95 S.Ct. 2281 (1975); Rule 16.1(c) of Supreme Court Rules.)

* * * * *

II.

THE CONSTITUTIONAL CHALLENGES NOW POSED BY APPELLANT WERE REFUTED WITH SOUND REASONING BY THE APPELLATE COURT BELOW SUCH THAT NO SUBSTANTIAL FEDERAL QUESTION IS HERE PRESENTED.

Where an appeal from a state court does not appear to present a substantial federal question, dismissal of the appeal is in order. (Rule 16.1(b) of Supreme Court Rules.) Although appellant has raised what must be denominated "federal questions," they are not substantial federal questions, as the discussion in II. A., II. B.,

and II. C. below clearly demonstrates. Accordingly, appellant's appeal can and should be summarily dismissed at this stage of consideration by this Court.

A.

FORMER CALIFORNIA CIVIL CODE SECTION 5124 DID NOT IMPAIR THE OBLIGATION OF CONTRACT BETWEEN THE PARTIES TO THIS APPEAL.

Article I, section 10, clause 1 of the United States Constitution, and Article I, section 9 of the California Constitution as well, do "...not operate to obliterate the police power of the states." (Allied Structural Steel Co. v. Spannaus 438 U.S. 234, 241, 57 L.Ed.2d 727, 734, 98 S.Ct. 2716 (1978).) The Contract Clause of the Federal Constitution (after which California's Constitution is patterned), prohibiting the impairment of contract, is not meant to be absolute and is not designed "...to be read with literal exactness like a mathematical formula." (Home Building & Loan Assn. v. Blaisdell, 290 U.S. 398, 428, 78 L.Ed. 413, 423, 54 S.Ct. 231, 88 ALR 1481 (1934); El Paso v. Simmons (1965) 379 U.S. 497, 507, 13 L.Ed.2d 446, 454, 85 S.Ct. 577 (1965); United States Trust Co. v. New Jersey, 431 U.S. 1, 21, 52 L.Ed.2d 92, 109, 97 S.Ct. 1505 (1977).)

All that is required to remain in harmony with the Contract Clause of the United States Constitution is that "legislation adjusting the rights and responsibilities of contracting parties must be upon reasonable conditions and of a character appropriate to the public purpose justifying its adoption." (United States Trust Co. v. New Jersey, supra, 431 U.S. 1, 22, 52 L.Ed.2d 92, 109-110, 97 S.Ct. 1505; Allied Structural Steel Co. v. Spannaus, supra, 438 U.S. 234, 244, 57 L.Ed.2d 727, 736, 98 S.Ct. 2716.) The motive, policy, and object of the legislative act must be considered to determine whether or not it violates the obligation of a contract. (Ogden v. Saunders, 12 Wheat 213, 6 L.Ed. 606; El Paso v. Simmons, supra.) "Contracts are to be regarded as having been made subject to the future exercise of the

constitutional power of the state, and the reservation of essential attributes of sovereign power is read into contracts as a postulate of the legal order." (Home Building & Loan Assn. v. Blaisdell, supra; El Paso v. Simmons, supra.) Obligations may be modified without necessarily violating the Contract Clause of the United States Constitution. (United States Trust Co. v. New Jersey, supra.) "...an impairment may be constitutional if it is reasonable and necessary to serve an important purpose." (Id., 431 U.S. at p. 25, 52 L.Ed.2d at p. 112, 97 S.Ct. 1505.)

Any technical impairment of a contractual obligation just gives rise to an inquiry to resolve whether it is permitted under the United States Constitution, with the reviewing court attempting "...to reconcile the strictures of the Contract Clause with the 'essential attributes of sovereign power'...necessarily reserved by the states to safeguard the welfare of their citizens." (Id., 431 U.S. at p. 21, 52 L.Ed.2d at p. 109, 97 S.Ct. 1505.) An emergency situation and the limited duration of a relief measure are appropriate factors to take into account in deciding the reasonableness of an impairment for purposes of the United States Constitution's Contract Clause, but such factors are not essential to be involved in every case for an impairment to be found to be reasonable. (Id.) It is enough for the state legislation to have a significant and legitimate public purpose intended behind its enactment, "such as the remedying of a broad and general social or economic problem, but the public purpose need not be addressed to an emergency or temporary situation." (Energy Reserves Group, Inc. v. Kansas Power & Light Co., 459 U.S. 400, 412, 74 L.Ed.2d 569, 581, 103 S.Ct. 697.)

A state holds powers which are vested in it "to promote the common weal or to insure the general good of the public which police power is paramount to any rights enjoyed under contracts between individuals." (Manigault v. Springs, 199 U.S. 473, 480, 50 L.Ed. 272, 26 S.Ct. 127 (1905); Allied Structural Steel Co. v. Spannaus, supra, 438 U.S. at p. 241, 57 L.Ed.2d 727 at p. 734, 98

S.Ct. 2716; Home Building & Loan Assn. v. Blaisdell, supra, 290 U.S. at 437, 78 L.Ed. at 428, 54 S.Ct. 231.) "Contractual arrangements remain subject to subsequent legislation by the presiding sovereign." (Merrion v. Jicarilla Apache Tribe, 455 U.S. 130, 148, 71 L.Ed.2d 21, 36, 102 S.Ct. 894 (1982).) Above all, the prohibition against impairing contractual obligations "must be accommodated to the inherent police power of the state to safeguard the vital interests of its people." (Exxon v. Eagerton, 462 U.S. 176, 190, 76 L.Ed.2d 497, 509-510, 103 S.Ct. 2296 (1983).)

A few days after the filing of the California Court of Appeal's decision in the instant case, the California Supreme Court handed down a decision in In re Marriage of Barnes, 43 Cal.3d 1371 (1987), in which it held that the public interest in remedying the "rank injustice" of a situation where some persons would be precluded from "recovery of a community property interest in a military pension... simply because the case fell by chance into the 18-month gap between the effective dates of FUSFSPA and the McCarty decision" and the public interest "in achieving an equitable dissolution of the marital relationship" justified the retroactive application of California Civil Code section 5124 and was a proper state exercise of police power that did not impair spouses' contract rights in the constitutional sense and did not violate federal and state constitutional prohibitions against impairment of contract. (Id., at pp. 1377-1378.) The California Supreme Court thus recognized that, just as the United States Congress had recognized a basic inequity against non-military member's spouses with respect to the division of military pensions following the McCarty Decision, supra, and enacted FUSFSPA to remedy the perceived unfairness, so the California Legislature saw an inequity in the treatment of spouses of military members in the application of FUSFSPA within California, and enacted California Civil Code section 5124 to cure the inequity. In approving of this state legislative action, the California Supreme Court did not

ignore the factors stressed by appellant that were mentioned in Home Building & Loan Assn. v. Blaisdell, supra, as set forth on page 21 of appellant's jurisdictional statement. Neither did it or the California Court of Appeal in the instant case strain to uphold the constitutionality of California Civil Code section 5124 out of some judicial animus toward this Court's reversal of California judicial precedents by the McCarty Case. Instead, both courts very reasonably found that that California Civil Code section 5124 was a proper exercise of state police power to carry out the intent and mandate of FUSFSPA to equitably divide military retirement benefits between longstanding spouses. The California Legislature quite properly determined that it would not be fair to have military retirement benefits treated as community property before the sway of the McCarty Decision and after the effective date of FUSFSPA for like marriages, while denying the same treatment to those persons whose dissolutions occurred between the federal case and the federal legislation. And California courts found a sound legal basis for this state legislative action, despite the nonabsolute criteria enunciated by Home Building & Loan Assn. v. Blaisdell, supra. No grave emergency of national dimension had to exist for California Civil Code section 5124's enactment to be upheld. Equitable dissolution of the marital relationship was sufficient legal justification. (In re Marriage of Barnes, supra; In re Marriage of Doud, 181 Cal.App.3d 510, 521 (1986); In re Marriage of Potter, 179 Cal. App.3d 73, 84 (1986); In re Marriage of Buol, 39 Cal.3d 751, 760-761 (1985).)

Nothing claimed to be lost by appellant is of more paramount importance than equitable dissolution of the marital relationship. While he brings up respondent Sharon Chalko's retirement pay, the record is quite clear that appellant bargained away nothing to keep his military retirement pay as "separate property," just as it may be presumed that appellant received some community property assets in lieu of sharing in respondent's minimal retirement pay benefits, which also had not vested but were listed as community property

assets in the written Marital Settlement Agreement (unlike appellant's military retirement benefits).

Rather than favoring a limited class, the remedial legislation enacted by the California Legislature had the salutary effect of harmonizing the treatment of the broad class of spouses of military members so that all would be treated fairly and the same, as California and the United States Congress clearly intended. (See 1982 U.S. Code Cong. & Admin. News, vol. 3, p. 1611, where the Legislative History of Public Law 97-252 (Senate Report No. 97-502) is recounted with respect to subsection (c) of 10 U.S.C. 1408 (FUSFSPA) and its purpose, as follows: "The purpose of this provision is to place the courts in the same position that they were in on June 26, 1981, the date of the McCarty decision, with respect to treatment of non-disability military retired or retainer pay. The provision is intended to remove the federal pre-emption found to exist by the United States Supreme Court and permit State and other courts of competent jurisdiction to apply pertinent State or other laws in determining whether military retired or retainer pay should be divisable. Nothing in this provision requires any division; it leaves that issue up to the courts applying community property, equitable distribution or other principles of marital property determination and distribution. This power is returned to the courts retroactive to June 26, 1981. This retroactive application will at least afford individuals who were divorced (or had decrees modified) during the interim period between June 26, 1981 and the effective date of this legislation the opportunity to return to the courts to take advantage of this provision.") It is significant, too, that by being discretionary in nature, the state statute in issue was cast in a very reasonable mode. A California court was not compelled to order modification of a dissolution decree under California Civil Code section 5124 while that statute had its limited vitality, when doing so would have been inequitable--as when the parties treated the serviceman's military retirement benefits as community property assets so that the serviceman gave up other property in exchange for keeping those benefits for himself.

(In re Marriage of Downes, 177 Cal.App.3d 205, 210 (1986).) California courts have hardly circumvented the United States Constitution in cases involving retired American servicemen. Rather than grant a summary reversal, this Court should dismiss appellant's appeal as failing to raise a substantial federal constitutional challenge to the action of the court appealed from, per Rule 16.1(b) of Supreme Court Rules, or affirm the judgment sought to be reviewed, per Rule 16.1(c) of Supreme Court Rules.

B.

FORMER CALIFORNIA CIVIL CODE SECTION 5124 DID NOT DEPRIVE APPELLANT BRUNO CHALKO OF HIS SEPARATE PROPERTY WITHOUT DUE PROCESS OF LAW.

Former California Civil Code section 5124 did not invidiously discriminate against anyone. A military serviceman's spouse could only receive relief under its authority if it was equitable to grant such relief to that petitioning spouse. (In re Marriage of Downes, supra.) In his arguments, appellant Bruno Chalko ignores the fact that California Civil Code section 5124 was enacting legislation to restore property rights to persons who always had them under California law, except perhaps when this Court briefly held in McCarty v. McCarty, supra, that federal law preempted the field. The California Legislature was further carrying out the spirit and intent of Congress when it enacted the Federal Uniformed Services Former Spouses' Protection Act (FUSFSPA), by providing a means to effectuate this federal law to all who were given shelter under its umbrella. Appellant very cleverly tries to create an inconsistency of treatment of military members and of their spouses by claiming that the result in In re Marriage of Buol, 39 Cal.3d 751 (1985) concerning a finding of nonretroactivity conflicts with the approval of retroactivity in the instant case by the California Court of Appeal. But no such inconsistency exists. For, in Buol, supra, the state's paramount interest in equitable dissolution of the marital relationship would not have been furthered by according retroactive effect to California Civil Code section 4800.1, while in the instant case and similar cases approving the retroactive effect of California Civil Code section 5124 the state's interest in equitable dissolution of the marital

partnership was furthered by according retroactive effect to that state statute. For the same reasons announced in In re Marriage of Barnes, supra, at pp. 1377-1378; In re Marriage of Potter, 179 Cal.App.3d 73, 81-82 (1986); Mueller v. Walker, 167 Cal.App.3d 600 (1985); and In re Marriage of Bouquet, 16 Cal.3d 583, 593-594 (1976), former California Civil Code section 5124 did not deprive appellant Bruno Chalko of his separate property without due process of law.

C.

FORMER CALIFORNIA CIVIL CODE SECTION 5124 DID NOT DEPRIVE APPELLANT BRUNO CHALKO OF EQUAL PROTECTION OF THE LAWS.

"[L]egislation may impose special burdens on defined classes in order to achieve permissible ends." (Rinaldi v. Yeager, 384 U.S. 305, 309, 16 L.Ed.2d 577, 580, 86 S.Ct. 1497 (1966). As the California Court of Appeal points out in its opinion in the instant case, California Civil Code section 5124 is a statute which specifically authorizes the treatment questioned by appellant. A "legislative classification need only bear a rational relationship to a conceivable state purpose" in order to withstand a challenge on "equal protection" grounds. (In re Marriage of Carpenter, 188 Cal.App.3d 604, 617 (1986); Fein v. Permanente Medical Group, 38 Cal.3d 137, 162-164 (1985); Fullerton Joint Union High School Dist. State Bd. of Education, 32 Cal.3d 779, 798-799 (1982).) All that is required by equal protection is that legislation treats similarly situated persons similarly. (Rostker v. Goldberg, 453 U.S. 57, 79, 69 L.Ed.2d 478, 495, 101 S.Ct. 2646 (1981).) The state must just govern impartially. (Lehr v. Robertson, 463 U.S. 249, 265, 77 L.Ed. 614, 629, 102 S.Ct. 2985 (1983).

Purposeful discrimination is what offends the United States Constitution (and the California Constitution, as well). (Washington v. Seattle School Dist. No. 1, 458 U.S. 457, 484-485; 73 L.Ed.2d 896, 916-917, 102 S.Ct. 318; Rogers v. Lodge 458 U.S. 613, 618-619, 73 L.Ed.2d 1012, 1019, 102 S.Ct. 3272 (1982).) Absolute equality is not required. (Breedlove v. Suttles, 302 U.S. 277, 281, 82 L.Ed. 252-255, 58 S.Ct. 205 (1937).) Neither is exact

equality. (Norvell v. Illinois, 373 U.S. 420, 423, 10 L.Ed.2d 456, 459, 83 S.Ct. 1366 (1963). The Fourteenth Amendment to the United States Constitution does not prohibit legislation that is special in character. (Central Lumber Co. v. South Dakota, 226 U.S. 157, 160-161, 57 L.Ed. 164, 169, 33 S.Ct. 66 (1912). If a classification has some reasonable basis, it will not offend either the United States Constitution or the California Constitution "simply because the classification is not made with mathematical nicety or because in practice it results in some inequality." (Williams v. Vermont, 472 U.S. 14, 25, 86 L.Ed.2d 11, 21, 105 S.Ct. 2465, n. 9 (1985).)

Just because California precluded military servicemen from coming back into court to stop military retirement funds from going to spouses who had been allowed to share in those funds before the McCarty Case, supra, was handed down (In re Marriage of Fellers, 125 Cal.App.3d 252, 256-258 (1981)), does not mean that the California Legislature could not have properly found it to be of paramount interest to enact legislation at a later time that allowed military spouses to share in such benefits, which had been California law all along. "The result is that, for most purposes, McCarty not only is not the law but never really was." (In re Marriage of Floweree, 195 Cal.App.3d 1438, 1443 (1987); Aloy v. Mash, 38 Cal.3d 413, 421-422 (1985).) "When a federal statute overrides a state statute under the supremacy clause 'the repeal of the federal statute reinstates or revives the state law without an express reenactment by the state legislature....'The result is the same regardless of whether the federal statute is repealed or its repealing effects on state law are expressly rescinded by other congressional action.'....Accordingly, under FUSFSPA the application of California's community property law was revived and became operative on June 26, 1981." (In re Marriage of Barnes, supra, at pp. 1376-1377.) Under these circumstances, appellant's equal protection argument is without validity. The general principles enunciated in Slater v. Blackwood, 15 Cal.3d 791, 797 (1975) are to be considered not in

a vacuum, but along with the reasons and state purposes sought to be advanced by a statutory enactment. The purpose of promoting the state's "paramount interest in the equitable distribution of marital property upon dissolution" behind former California Civil Code section 1524 is a legitimate concern of the state. The class affected by this legislation was not invidiously discriminated against. Nor was any purposeful discrimination present to deny a class of people which included appellant Bruno Chalko equal protection of the laws.

* * * * *

III.

THE DECISION APPEALED FROM RESTS ON AN ADEQUATE NON-FEDERAL BASIS.

Although the decision appealed from decided various constitutional issues raised by appellant Bruno Chalko, it nevertheless rested on the legal viability of California Civil Code section 5124, as supported by several state cases including In re Marriage of Barnes, 43 Cal.3d 1371 (1987); In re Marriage of Carpenter, 188 Cal.App.3d 604 (1986); In re Marriage of McDonough, 183 Cal.App.3d 45 (1986); In re Marriage of Doud, 181 Cal.App.3d 510 (1986); In re Marriage of Potter, 179 Cal.App.3d 73 (1986); and Mueller v. Walker, 167 Cal.App.3d 600 (1985). California's right to exercise its own police authority is ground enough to support the decision below on a non-federal basis. Therefore, this appeal need not be addressed on the merits, per Rule 16.1(b) of Supreme Court Rules.

* * * * *

IV.

THE INSTANT APPEAL IS PREMATURE, AND SHOULD NOT BE ENTERTAINED NOW, SINCE FURTHER TRIAL COURT PROCEEDINGS REMAIN TO BE DECIDED ON REMAND.

Appellant admits that further proceedings remain to be addressed on remand in the trial court but he cavalierly claims that the outcome of those proceedings will be a foregone conclusion. Until those proceedings have occurred, there is no final judgment in the case which appellant Bruno Chalko seeks to appeal from. And a final judgment or decree is required for United States Supreme Court review. (Radio Station WOW, Inc. v. Johnson, 326 U.S. 120, 124, 89 L.Ed. 2092, 65 S.Ct. 1475 (1945); 28 U.S.C. §§ 1257.) New contested legal issues could arise from the remaining trial proceedings to take place, after which appellant should be able to raise challenges in one proceeding. This appeal can and should be denied present review as having been prematurely brought, per authority of Rule 16.1 (a) and (d) of Supreme Court Rules.

* * * * *

CONCLUSION

For all of the reasons enumerated above, appellant Bruno Chalko's appeal before this Court should be denied or the judgment sought to be appealed summarily affirmed. Neither should certiorari be granted. In the alternative, this matter may be remanded to the trial court to complete proceedings there before considering any of the issues prematurely brought by appellant.

Respectfully submitted this 15th day of June, 1988,

Dennis S. Tilton

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PROOF OF SERVICE BY MAIL

STATE OF CALIFORNIA )
) ss.
COUNTY OF SAN BERNARDINO )

I am over the age of 18 years, employed in the County of San Bernardino, and not a party to the within action; my business address in 155 W. Hospitality Lane, Suite 210, San Bernardino, California 92408. I am a person whose application is pending as a member of the Bar of this Court.

On June 15, 1988, I served the within

MOTION TO AFFIRM OR DISMISS

in said action, by placing a true copy thereof enclosed in a sealed envelope, addressed as follows, and deposited the same in the United States Mail at San Bernardino, California.

RUSSELL IUNGERICH
A Professional Law Corporation
3580 Wilshire Blvd, Suite 1920
Los Angeles, CA 90010

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 15th day of June, 1988 at San Bernardino, California.

Dennis S. Tilton

Dennis S. Tilton